



17  
MAY 2 1944

CHARLES EDWARD GROPLEY  
CLERK

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1943.

No. 853

PAUL J. BELLEVANCE,

*Petitioner,*

*v.*

FRANK MORROW CO., INC.,

*Respondent.*

**BRIEF IN OPPOSITION TO PETITION  
FOR WRIT OF CERTIORARI.**

NATHANIEL FRUCHT,  
*Attorney for Respondent.*



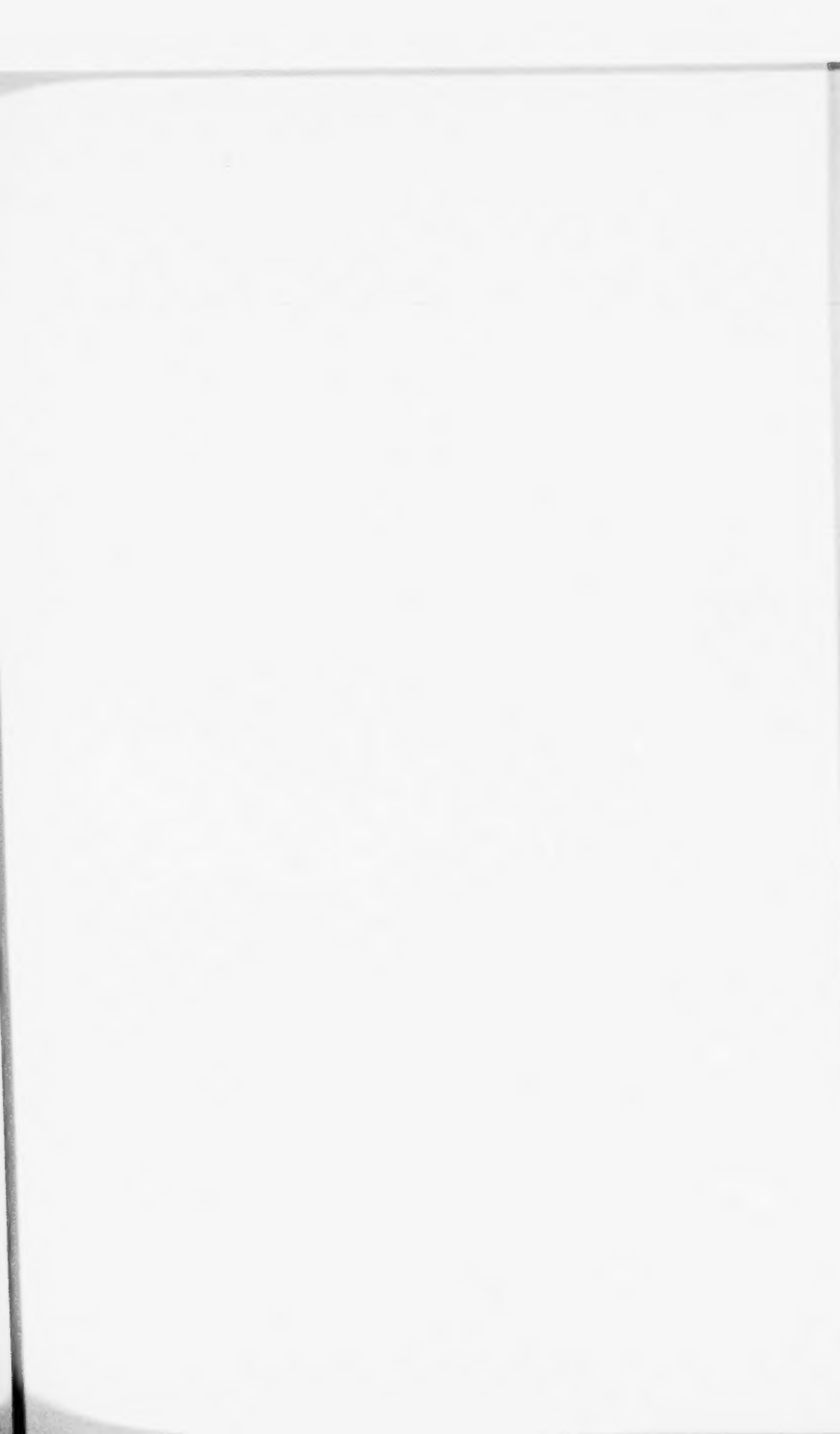
## Subject Index

	PAGE
THE CHARACTER OF THE SUIT .....	1
THE PRIOR ART .....	2
THE DECISION OF THE DISTRICT COURT .....	3
THE DECISION OF THE CIRCUIT COURT OF APPEALS .....	4
ARGUMENT .....	5
CONCLUSION .....	7

## Table of Cases Cited

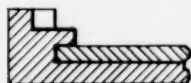
<i>Atlantic Works v. Brady</i> , 107 U. S. 192 .....	5
<i>Altoona Theatres v. Tri-Ergon Corp.</i> , 294 U. S. 477 .....	5
<i>Cuno Corp. v. Automatic Devices Corp.</i> , 314 U. S. 84 .....	5
<i>Gold Seal v. Westerman</i> , 133 F (2) 192 .....	5
<i>Goodyear v. Ray-O-Vac Co.</i> , 64 S. Ct., 593 .....	5
<i>Hollister v. Benedict Mfg. Co.</i> , 113 U. S. 59 .....	7
<i>Jaite-Grant Display Bag Co. v. Thomas M. Royal &amp; Co.</i> , 27 F. Supp. 251 .....	5





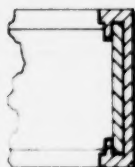
**BELLAVANCE PATENT**  
**NO. 2,108,247**

*Fig. 4*



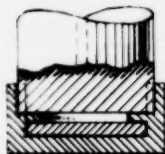
**MANICKAS PATENT**  
**NO. 2,114,930**

*Fig. 5*



**HIERING PATENT**  
**NO. 1,996,109**

*Fig. 3*



IN THE

# Supreme Court of the United States

OCTOBER TERM, 1943.

No.

PAUL J. BELLAVANCE,	} Petition for Writ of Certiorari
<i>Petitioner,</i>	
<i>v.</i>	
FRANK MORROW CO., INC.,	
<i>Respondent.</i>	

---

## BRIEF IN OPPOSITION ON BEHALF OF RESPONDENT

---

### I.

#### The Character of the Suit.

The petitioner is the owner of two patents, Bellavance No. 2,108,247 patented February 15, 1938 and Manickas No. 2,114,930 patented April 19, 1938, for improvements in bracelet constructions. The defendant is a manufacturer of jewelry bracelets which are alleged to be infringements of these patents.

The patents in suit relate to the construction of a bracelet to be worn on a lady's wrist. The particular type of bracelet is made in two sections, which are curved and have side flanges, and are hinged together; the free ends of the two sections are



provided with catch and latch connections so that the bracelet may be opened for positioning on the wrist and then snapped shut for retention on the wrist.

The hinge construction for bracelets of this type is commonly made separately, in the form of two plates hinged together; these plates were for many years inserted into the section ends between the flanges and soldered in place.

Instead of using solder, Bellavance inserted his hinge plates tightly between the flanges so as to abut the flanges, and then used a punch to strike the inner walls of the flanges and punch down pieces of metal (called lugs) from the interior of the flange walls to contact with and grip the plates. This is the essence of the subject matter of Claims 1 and 2 of Bellavance. Since Bellavance used bracelet sections of thin stock having straight-sided flanges, he believed it necessary to prevent buckling of the flanges during the punching operation, and therefore provided a support for the flange walls. The supporting of the flange walls during the punching operation of striking down the lug is the essence of Claims 2, 3 and 4 of Bellavance.

Manickas utilized another type of bracelet section. Instead of straight-sided walls, his bracelet sections have flanges which extend upwardly and then inwardly to form what he calls a "channel shaped flange". The hinge plates are pushed under the inturned flange ends, and then, just as in Bellavance, pieces of metal (lugs) are punched out of the stock of the inturned flange edges onto the hinge plate to lock it in place. This is the essence of Claims 1 and 2 of the Manickas patent.

## II.

### The Prior Art.

The District Court of Rhode Island and the First Circuit Court of Appeals considered the evidence of prior use and prior knowledge presented by the defendant, and particularly the Hierung patent No. 1,996,109. As stated in the opinion of the Court of Appeals, (p. 217), this patent

"discloses a metal frame for women's hand bags made out of thin, channel shaped stock and having mitered corners reinforced by a flat angle-iron inserted between the flanges or side walls and gripped securely in place by what the patentee calls 'tabs' (it is evident from the drawings that 'tabs' are identical with what are called 'lugs' in the plaintiff's patents), struck out of the inner surfaces of the flanges."

The Hiering patent, which is prior to both the patents in suit, thus discloses both an article of manufacture and a method, in which a plate element is gripped between the flanges of a channel member by striking down lugs from the inner walls of the flanges to engage the plate element.

In addition to the Hiering patent many other patents dating back to 1880 were introduced in evidence and were considered by the Court, (p. 14), as well as bracelets which were manufactured and sold by bracelet manufacturers prior to the inventions of the patents in suit, and which also utilize lugs struck down from the flanges of the bracelet channel sections to lock the hinge plates in place. (pp. 15, 16).

### III.

#### The Decision of the District Court.

After consideration of the evidence introduced the District Court made its findings:

1. That the claims of both patents in suit are fully anticipated by the prior art and particularly by the disclosure of the Hiering patent (p. 17).
2. That the Bellavance and Manickas bracelets are not the result of invention as distinguished from mere mechanical skill possessed by those skilled in the art to which they appertain (p. 17).
3. That the Bellavance and Manickas bracelets are not patentable (p. 20).
4. That both patents in suit are invalid (p. 17).

## IV.

**The Decision of the Circuit Court of Appeals.**

The plaintiff having appealed, the First Circuit Court of Appeals reviewed the findings in the light of the evidence submitted and affirmed the judgment, Judge Woodbury stating:

"It seems to us clear that all of these claims (the article claims) are anticipated by the prior art, particularly by the Hiering patent (No. 1,996,109) upon which the court below principally relied." (p. 217).

"Claim 2 is the plaintiff's generic method claim. It covers striking down a portion of the lateral flanges 'while supporting the lateral faces of said flanges at points adjacent to the struck down portions'. This quoted phrase contains the crux of the plaintiff's method. He says that without support the flange of bracelet stock, being necessarily thin, would crumple or collapse when struck by a punch or die for the purpose of striking a lug out of it, and that to think of supporting it to prevent its crumpling was not only new but also called for an exercise of the inventive faculty. We admit that the idea of supporting thin metal while striking a piece out of its edge was, so far as the record in this case is concerned,<sup>3</sup> new with Bellavance, but we have grave difficulty in seeing how it could possibly be said that an exercise of the faculty of invention was required to conceive the idea. Making full allowance for the fact that a new technique may seem obvious only after someone else has thought of it, still it seems to us too clear for argument that any journeyman who discovered that a piece of thin metal collapsed or crumpled when he struck it on the edge would at once think of the expedient of supporting it at points adjacent to the place where he desired to strike it. We believe that this is the kind of thing which workmen are accustomed to do almost as a matter of routine and we cannot believe that any uncommon skill was involved in conceiving a vise-like 'jig' such as is disclosed in the Bellavance patent." (pp. 218, 219).

---

<sup>3</sup>Hiering used heavier stock for his bag frames than is used in making bracelets and apparently he did not need to support it when striking down his "tabs".

The plaintiff, thereafter, filed a petition for rehearing which was denied February 24, 1944, and subsequently filed a motion to reconsider the denial of the petition for rehearing, which motion was denied March 17, 1944. The plaintiff thereupon filed his petition for issuance of a writ of *certiorari*.

## V.

### Argument.

In his brief the petitioner urges the following reasons for allowance of the writ of *certiorari*.

1. The decision of the First Circuit Court of Appeals is in conflict with the law announced by the U. S. Supreme Court in *Goodyear v. Ray-O-Vac Co.*, (1944), 64 S. Ct. 593.

2. The decision of the First Circuit Court of Appeals is in conflict with the decision of the Second Circuit Court of Appeals in *Gold Seal v. Westerman* (1943), 133 F. (2) 192.

Either of these conflicts would furnish appropriate grounds for a review under the provisions of Sec. 240 A of the Judicial Code (28 U. S. Code, Sec. 347) and U. S. Supreme Court Rule 38, (5) (b).

The respondent argues that neither of these conflicts exist.

1. *The decision in the instant case is consistent with the law announced in the Goodyear case.*

The law of patentability as it pertains to the instant case is clearly and fully set forth in Judge Hartigan's opinion (pp. 17, 18, 19) in which the court relied on *Atlantic Works v. Brady*, 107 U. S. 192, *Jaite-Grant Display Bag Company v. Thomas M. Royal & Co.*, 27 F. Supp. 251, 252, *Altoona Theatres v. Tri-Ergon Corp.*, 294 U. S. 477, 486, and *Cuno Corp. v. Automatic Devices Corp.*, 314 U. S. 84, 91 and 92. Applying the rule of law as laid down in the *Cuno Corp.* case to the facts in the instant case, namely,

"that a new device, however useful it may be, must reveal the flash of creative genius, not merely the skill of the calling",

Judge Hartigan found that the constructions of the patents in issue were not patentable.

The situation in the *Goodyear* case, cited by the petitioner, is not analogous to and does not accord with the facts in the instant case. In the *Goodyear* case the District Court considered the evidence and found that although the problem was an old problem in the art no solution had been obtained prior to the invention in issue; wherefore the District Court found the claims of the patent in suit valid. The Seventh Circuit Court of Appeals reexamined the findings in the light of the evidence submitted and accepted them. The United States Supreme Court refused to set aside the concurrent findings of the two lower courts because

“it must be a strong case to set aside the concurrent findings of two courts”.

That the *Goodyear* case is not in conflict with the *Cuno Corp.* case and does not liberalize the legal standards for invention is recognized in the opinion of the First Circuit Court of Appeals on the Motion to Reconsider Denial of Plaintiff's Petition for Rehearing (p. 222). Judge Woodbury stated:

“In the *Goodyear* case, however, the Supreme Court did not grant *certiorari* to resolve conflicting decisions below, but granted the writ to review an affirmance by the Circuit Court of Appeals for the Seventh Circuit of a district court decree holding certain claims of a patent valid and infringed. In this situation a majority of the court decided that the case was not strong enough to justify setting aside the concurrent findings of the two courts, district and circuit [fol. 225] court of appeals, to the effect that the claims in suit were valid in that they disclosed an exercise of the faculty of invention. What it did in the *Goodyear* case, therefore, does not indicate that it is receding from the strict application of the standard for invention established in the *Cuno* case, which was not mentioned in the *Goodyear* opinion.”

It is therefore submitted that the *Goodyear* case does not modify or change the legal standards for invention defined in the *Cuno Corp. v. Automatic* case.

2. *The question decided by the Second Circuit Court of Appeals in Gold Seal v. Westerman bears no relation to any question presented or decided in the instant case, nor does it deal with any question peculiar to patent law.*

In the instant case the Circuit Court of Appeals, as also the District Court, considered the evidence adduced by both parties and both courts found the facts determining invention and validity against the plaintiff.

There was no submitted evidence and no findings of facts determining invention and validity in the *Gold Seal* case relied on by the petitioner.

In the *Gold Seal* case the Circuit Court of Appeals had before it only the ruling of the District Court upon a motion to dismiss on the ground that the issues in the case were *res adjudicata*. The defense was on appeal held bad, on the simple ground that the defendant was not a party to the previous suit or in privity with the previous defendant. The decision thus pertains to a question of repetitive litigation, and does not set forth any doctrine which is peculiar to patent law, nor does it change or modify the patent law relating to novelty and invention as set forth in *Cuno Corp. v. Automatic* and in *Hollister v. Benedict Mfg. Co.*, 113 U. S. 59 at pages 70, 71 and 72.

## VI.

### Conclusion.

The District Court and the First Circuit Court of Appeals both reviewed the evidence presented in this case, and both found the claims of the Bellavance patent and the Manickas patent in suit invalid. The decisions of the two courts were thus concurrent.

The *Goodyear* decision relied on by the petitioner as being in conflict with the decision of the First Circuit Court of Appeals is, as stated above, not in conflict, and neither modifies nor liberalizes the legal standards for invention defined in *Cuno Corp. v. Automatic* case; nor does the *Gold Seal v. Westerman* case relied on by the petitioner conflict with the decision of the

First Circuit Court of Appeals in the present case.

The petition for a writ of *certiorari* should therefore be denied.

Respectfully submitted,

NATHANIEL FRUCHT,  
*Attorney for Respondent*  
1023 Hospital Trust Bldg.,  
Providence, R. I.

